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No. 34039-9-II

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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

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**COURT OF APPEALS  
OF THE STATE OF WASHINGTON, DIVISION II**

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GENE CHAMPAGNE, CARY BROWN, ROLAND KNORR, and  
CHRISTOPHER SCANLON, Appellants

v.

THURSTON COUNTY,  
Respondent.

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**RESPONDENT THURSTON COUNTY'S BRIEF**

---

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## **I. COUNTER STATEMENT OF THE ASSIGNMENTS OF ERROR**

Respondent Thurston County understands that Appellants take issue with the trial court's decision to apply RCW 4.96.010 and RCW 4.96.020 to wage and hour claims. Respondent disagrees with Appellants' characterization of chapter 4.96 RCW as "Washington's Tort Claims Act," in light of the 1993 amendments and recent case law.

## **II. COUNTER STATEMENT OF THE CASE**

Appellants are four corrections officers for the Thurston County Sheriff's Office in Thurston County, Washington. CP 27. All four Appellants are covered by Collective Bargaining Agreements that have been in place during their employment with Respondent, Thurston County. CP 119, CP 172. In the Complaint, Appellants allege they are "overtime eligible employees" whose pay for overtime, compensatory time, "specialty pay," "supervisor pay," and "holiday pay" has been improperly delayed in violation of ch. 49.46 RCW (Washington Minimum Wage Act), RCW 49.48.010 (payment of wages at termination) and WAC 96-128-035 (payment interval regulation). CP 28-29. Appellants seek damages in the amount of "twice the amount of the wages wrongfully withheld from them" under RCW 49.52.050(2) and .070, based on the assertion that Respondent has willfully violated the provisions of ch. 49.46

RCW, RCW 49.48.010 and WAC 296-128-035. CP 30. Appellants also seek the recovery of prejudgment interest, costs and attorney's fees. CP 29-31. All of the damages sought by Appellants originate directly from the contractual provisions of the Collective Bargaining Agreements covering Appellants. CP 225-236, CP 243-255, CP 262-264, CP 269-274.

Appellants filed this action against Respondent, Thurston County, on September 29, 2004. CP 24. On March 23, 2005, after the entire Thurston County bench recused itself from the case, the action was assigned to the Honorable Vicki L. Hogan as visiting judge. CP 41. On September 30, 2005, Respondent brought a motion for summary judgment to dismiss Appellants' Complaint in its entirety due to Appellants' failure to satisfy the statutory prerequisites for asserting a claim for damages against the County. CP 42. Prior to filing this action, Appellants did not file any claim for damages directly with the County. CP 70-71.

Appellants acknowledge this fact in their Complaint, but allege the requirements of chapter 4.96 RCW are inapplicable to their case because Appellants' claims "do not sound in tort." CP 27. As discussed below, Appellants are incorrect – both the language of the relevant statutes and recent case authority confirm that the pre-filing requirements of RCW 4.96.010(1) and RCW 4.96.020(1)-(2) are not limited to tort claims, and apply to the types of claims asserted by Appellants in this action. As a

consequence, the Court should affirm the trial court's order dismissing Appellants' Complaint against Respondent, Thurston County.

### III. ARGUMENT

**A. Filing a claim for damages is a condition precedent to the commencement of any action claiming damages against a county.**

RCW 36.45.010 provides that “[a]ll claims for damages against any county shall be filed in the manner set forth in chapter 4.96 RCW” (emphasis added). The referenced statutes, chapter 4.96 RCW, were revised by the Washington Legislature in 1993 in order to:

provide a single, uniform procedure for bringing **a claim for damages** against a local governmental entity. The existing procedures, contained in chapter 36.45 RCW, counties, chapter 35.31 RCW, cities and towns, chapter 35A.31 RCW, optional municipal code, and chapter 4.96 RCW, other political subdivisions, municipal corporations, and quasi-municipal corporations, are revised and consolidated into chapter 4.96 RCW.

1993 Laws, Chapter 449, § 1 (emphasis added). Consistent with this legislative purpose, RCW 4.96.010 provides that:

(1) All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation. **Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages.** The laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory.

(2) Unless the context clearly requires otherwise, for the purposes of this chapter, **"local governmental entity"** means a county, city, town, special district, municipal corporation as defined in RCW 39.50.010, quasi-municipal corporation, or public hospital...

(emphasis added). In companion with RCW 4.96.010, RCW 4.96.020 specifies the procedural requirements for asserting a claim for damages against a county or other local governmental entity:

(1) The provisions of this section apply to claims for damages against all local governmental entities.

(2) The governing body of each local government [governmental] entity shall appoint an agent to receive any claim for damages made under this chapter. The identity of the agent and the address where he or she may be reached during the normal business hours of the local governmental entity are public records and shall be recorded with the auditor of the county in which the entity is located. **All claims for damages against a local governmental entity shall be presented to the agent within the applicable period of limitations within which an action must be commenced.**

(3) All claims for damages arising out of tortious conduct must locate and describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose. If the claimant is incapacitated from verifying, presenting, and filing the claim in the time prescribed or if the claimant is a minor, or is a nonresident of the state absent therefrom during the time within which the claim is required to be filed, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing the claimant.

(4) No action shall be commenced against any local governmental entity for damages arising out of tortious

conduct until sixty days have elapsed after the claim has first been presented to and filed with the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty-day period.

(emphasis added).

In *Harberd v. City of Kettle Falls*, 120 Wn. App. 498, 84 P.3d 1241 (2004), *rev. denied*, 152 Wn.2d 1025 (2004), the Washington Court of Appeals specifically rejected the argument that “the claim filing statutes [chapter 4.96 RCW] do not apply to nontort claims, such as breach of contract.” *Harberd*, 120 Wn. App. at 509. Instead, based upon a plain reading of the statutes in question, the Court of Appeals held that the general pre-filing requirements contained in RCW 4.96.010(1) and RCW 4.96.020(1)-(2) apply to all damages claims, and that the specific sections of RCW 4.96.010(1) and RCW 4.96.020(3)-(4) that refer to “claims for damages arising out of tortious conduct” simply impose additional requirements that apply to tort claims:

These statutes apply the term “damages” in two different ways. Three references exist to “damages” without any qualifying language. RCW 4.96.010(1); former<sup>1</sup> RCW 4.96.020(1), (2). Then three references exist to “damages arising out of [their] tortious conduct.” RCW 4.96.010(1); former RCW 4.96.020(3), (4). The plain language of the statutes read in their entirety reflect a legislative intent that some general requirements apply to all damages claims while some specific requirements apply solely to claims arising out of tortious conduct.

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<sup>1</sup> The *Harberd* court referred to the “former” versions of the statutes in question because the claims at issue in *Harberd* arose prior to 2001, and chapter 4.96 RCW was revised in 2001 to clarify certain portions of RCW 4.96.010(2) and RCW 4.96.020(2). See Laws of 2001, ch. 119. The 2001 revisions to chapter 4.96 RCW are immaterial to the issues presented by the present motion, and do not alter the substance or applicability of the Court of Appeals’ holding in the *Harberd* case.

Accordingly, any person asserting a claim of damages must first file a claim of damages. RCW 4.96.010(1). “All claims for damages...shall be presented to and filed with” the concerned governmental entity. Former RCW 4.96.020(2). If the claimant alleges “damages arising out of tortious conduct,” the damages claim must set forth specific facts outlined in the statute. Former RCW 4.96.020(3). And if the claimant alleges “damages arising out of tortious conduct,” the claimant may not commence a court action “until sixty days have elapsed after the claim has first been presented to and filed with” the concerned governmental entity. Former RCW 4.96.020(4). While awkward, the foregoing reflects the plain meaning of the statute and we assume the statute means exactly what it says. *Morgan v. Johnson*, 137 Wn.2d 887, 890-91, 976 P.2d 619 (1999). The plain meaning supports the City’s argument that the applicable claim filing provisions apply to both tort and breach of contract claims.

*Harberd*, 120 Wn. App. at 510; *see also id.* at 512 (“By using the general term ‘damages’ and the more specific terms ‘damages arising out of tortious conduct’ in different sections of the statutes, the legislature presumably meant to distinguish the two” and to create a “definition of damages that encompasses both tort and breach of contract claims.”); *accord* RCW 36.45.010 (requiring that “[a]ll claims for damages against any county” be filed in accordance with the requirements of chapter 4.96 RCW – pre-litigation requirement of filing claim for damages directly with county not limited solely to tort claims); Laws of 1993, ch. 449, § 1, (in revising chapter 4.96 RCW, legislature intended to provide a single, uniform procedure for **bringing** “a claim for damages” against local governmental entities – statement of legislative intent does not limit applicability of required procedure solely to tort claims).

Because the plaintiff in the *Harberd* case failed “to file his claim for damages with the City before he filed his lawsuit for breach of

contract,” the Court of Appeals affirmed the trial court’s dismissal of the plaintiff’s complaint on summary judgment. *Harberd*, 120 Wn. App. at 512. As emphasized by the Court of Appeals:

A claimant must adhere strictly to the filing requirements of RCW 4.96.020. *Medina v. Pub. Util. Dist. No. 1 of Benton County*, 147 Wash.2d 303, 316, 53 P.3d 993 (2002). Dismissal is proper where a claimant fails to comply strictly with filing requirements of RCW 4.96.020. *Sievers v. City of Mountlake Terrace*, 97 Wash. App. 181, 183, 983 P.2d 1127 (1999). “This court is obliged to give full effect to the plain language of the statute even when the results of doing so may seem unduly harsh.” *Id.* (citing *Geschwind v. Flanagan*, 121 Wash.2d 833, 841, 854 P.2d 1061 (1993)).

*Harberd*, 120 Wn. App. at 513.

Here, as in *Harberd*, Appellants have failed to comply with the statutory requirements for asserting damages claims against a local governmental entity, as specified in RCW 4.96.010(1) and RCW 4.96.020(1)-(2). It is undisputed that Respondent, Thurston County, is a “local governmental entity” within the meaning of RCW 4.96.010(2), and that “[a]ll claims for damages” against the Respondent must be “filed in the manner set forth in chapter 4.96 RCW.” RCW 36.45.010. It is also undisputed that Appellants failed to file their individual claims for damages directly with the County before they filed their lawsuit in this action. Because the filing of a claim for damages is a “condition precedent to the commencement of any action claiming damages,” RCW 4.96.010(1), the trial court properly dismissed Appellants’ Complaint.

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**B. The legislative history supports the trial court decision requiring application of RCW 4.96.010 and 4.96.020 to the facts of this case.**

In 1993 the legislature, through House Bill 1218, made substantial changes to the requirements for filing claims against local governments.<sup>2</sup>

As provided above, the legislature declared the purpose of the amendments as, “to provide a single, uniform procedure for bringing a claim for damages against a local governmental entity.” Laws of 1993, ch. 449, § 1. House Bill 1218 amended RCW 36.45.010 to require that all claims for damages against a county, “shall be filed in the manner set forth in chapter 4.96 RCW.” Laws of 1993, ch. 449, § 10.

As for chapter 4.96 RCW, House Bill 1218 makes it clear that the claim filing requirements apply to any action claiming damages. In RCW 4.96.020(2), the legislature removed the phrase, “arising out of tortious conduct.” Instead, following the 1993 amendment, 4.96.020(2) read, “All claims for damages against any such entity for damages shall be presented to and filed with the governing body thereof...” Laws of 1993, ch. 449, § 3. The legislature also modified 4.96.010. Pre 1993, the requirement that a claim be filed prior to maintaining an action against a governmental entity was linked in the same sentence to actions arising out of tortuous conduct.

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<sup>2</sup> See CP 53-56 for a copy of House Bill 1218 as signed into law.

The legislature amended 4.96.010, in part, to state:

Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of **any action claiming damages.**

Law of 1993, ch. 449, § 2. The legislature made it clear that this requirement applied to any action for damages.

**C. The Wage and Hour statutes do not preempt the claim filing provisions found in chapter 4.96 RCW.**

Appellants argue that each statute waiving sovereign immunity must contain its own claim filing requirements or claim filing provisions will never apply to such statutes. As an example, Appellants assert that because Washington's wage and hour laws don't provide for "procedural constraints," the provisions in chapter 4.96 RCW can never apply to claims brought under such laws. See Brief of Appellant, pg. 22. This flies in the face of the intent expressed by the legislature in House Bill 1218. Laws of 1993, ch. 449, § 1. The legislature made it clear that House Bill 1218 was, "designed to provide a single, uniform procedure for bringing a claim for damages against a local governmental entity." Laws of 1993, ch. 449, § 1. Appellants argue that for every statute providing an action for damages against a local governmental entity, there would have to be a separate claim filing procedure, if so intended. This would create confusion and uncertainty for a litigant. This is the very reason the

legislature decided to create a simple, single process for those wishing to bring an action for damages against a municipality.

In support of Appellants' position, they cite to *Wilson v. Seattle*, 122 Wn.2d 814, 863 P.2d 1336 (1993). Appellants' reliance on this case is misguided for two reasons. First, the *Wilson* case involved a cause of action brought more than three years (May 2, 1990) prior to the effective date of House Bill 1218 (July 25, 1993). The provisions enacted in 1993 have no application to the *Wilson* case.<sup>3</sup> Secondly, *Wilson* involves application of a separate claim filing process established under a city ordinance. In the case at hand, the issue involves the application of RCW 36.45.010, 4.96.010 and 4.96.020, not a county ordinance. Appellants' arguments citing to *Wilson* have no merit.

With *Wilson*'s lack of applicability to the facts in this matter, one must look to the clear language found in the post-1993 claim filing provisions of chapter 4.96 RCW. While Appellants argue that each and every statute must have a separate and distinct claim filing procedure, the legislature has provided otherwise. Instead of a multitude of procedures, the legislature has enacted one process required as a "condition precedent

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<sup>3</sup> It must be noted that Appellants' arguments rely significantly on cases which pre-date the enactment of House Bill 1218 in 1993. Cases in which causes of actions were filed prior to the adoption of House Bill 1218 have no bearing on the legislature's intent of creating a single, uniform procedure for bringing a claim for damages against a local governmental entity.

to the commencement of any action claiming damages.” Laws of 1993, ch. 449, § 2. In essence, Appellants argue that the legislature does not have the authority to enact claim filing provisions within chapter 4.96 RCW that apply to all claims for damages against a local governmental entity because the original act, adopted twenty-six years earlier, concerned tortious conduct. There is no support for such a contention. The legislature made this point clear by simultaneously amending chapter 36.45 RCW, the chapter entitled “Claims Against Counties.” As provided in 36.45.010, “All claims for damages against any county shall be filed in the manner set forth in chapter 4.96 RCW.” The trial court properly dismissed the Appellant’s action for failing to follow the unambiguous language found in RCW 36.45.010, RCW 4.96.010 and RCW 4.96.020.

**D. Appellants’ causes of action meet the definition of an “action claiming damages” under RCW 4.96.010.**

Notwithstanding this plain statutory language, Appellants argue that their wage and hour claims should be excepted from the requirements of the claim filing statutes. This argument must be rejected for several reasons. First, as recently emphasized by the Washington Supreme Court in another case involving state wage and hour claims:

Where statutory language is “plain, free from ambiguity and devoid of uncertainty, there is no room for construction because the legislative intention derives solely from the language of the statute.” *Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 752, 888 P.2d 147 (1995) (quoting *Krystad v. Lau*, 65 Wn.2d 827, 844, 400 P.2d 72 (1965)). “In undertaking this plain language analysis, the court must

remain careful to avoid ‘unlikely, absurd or strained’ results.” *Burton v. Lehman*, 153 Wn.2d 416, 423, 103 P.3d 1230 (2005) (quoting *State v. Stannard*, 109 Wn.2d 29, 36, 742 P.2d 1244 (1987)).

*Berrocal v. Fernandez*, 155 Wn.2d 585, 590, 121 P.3d 82 (2005). As discussed above, the plain language of the claim filing statutes clearly states that “all claims for damages” are subject to the applicable statutory requirements. Appellants have failed to point to any language in the claim filing statutes, or to any other legal authority, to support their contention that the phrase “all claims for damages” should be turned on its head and interpreted to mean exactly the opposite – namely, that the claim filing statutes only apply to “some claims for damages.” If the legislature intended on limiting the language, they could have easily done so. The Court should decline Appellants’ invitation to interpret the claim filing statutes in such an unlikely, absurd and strained manner.

Second, the term “damages” should be interpreted by using the plain and ordinary meaning. “We give terms undefined in the statute their plain and ordinary meaning, unless we find contrary legislative intent.”

*Valentine v. Dep’t of Licensing*, 77 Wn. App. 838, 847, 894 P.2d 1352 (1995), rev. denied, 127 Wn.2d 1020 (1995). In *Boeing v. Aetna Casualty & Surety Co.*, 113 Wn.2d 869, 877, 784 P.2d 507 (1990), the court stated:

The plain, ordinary meaning of damages as defined by the dictionary defeats insurers’ argument. Standard dictionaries uniformly define the word “damages” inclusively, without

making any distinction between sums awarded on a "legal" or "equitable" claim. For example, *Webster's Third New International Dictionary* 571 (1971) defines "damages" as "the estimated reparation in money for detriment or injury sustained". See also *The Random House Dictionary of the English Language* 504 (2d ed. 1987) (cost or expense).

*Id.* at 877. Appellants allege in their Complaint that Respondent owes them money for wages wrongfully withheld. CP 7. Appellants also seek double damages due to Respondent "willfully failing to pay the due and payable wage payments." CP 7. Appellants actions clearly are for reparation in money for an alleged detriment. It is illogical to claim that the legislature had anything but the plain and ordinary meaning of "damages" in mind when they enacted HB 1218.

Third, it is anticipated that Appellants will argue in their reply brief the following theme found in Appellants' trial court argument: that the holding in the *Harberd* case is limited to tort and contract claims, and therefore statutory wage claims are not subject to the requirements of the claim filing statutes. While Respondent disagrees with this limited interpretation of *Harberd*, Appellants' interpretation does not support reversal of the trial court's dismissal as such argument fails to recognize that even **statutory** wage claims are considered to be claims based upon an alleged "implied contract." *SPEEA v. Boeing Co.*, 139 Wn.2d 824, 837-38, 991 P.2d 1126 (2000). As a consequence, the claims asserted in this case are similar in nature to the claims asserted in the *Harberd* case – both cases involve claims based upon an "implied contract." See *Harberd*, 120 Wn. App. at 507, 515-19 (plaintiff's claims based upon an alleged

“implied contract”). Given that the two cases involve the exact same type of claims, the Court of Appeals’ holding that “the claim filing statutes required Mr. Harberd to file his claim for damages with the City before he filed his lawsuit for breach of contract” should apply with equal force here. *Id.* at 512.

Finally, contrary to Appellants’ attempt to characterize their claims as being based on state wage statutes and regulations, Appellants’ own Complaint and deposition testimony confirm that their damages claims are actually based on various contract provisions. As an example, Paragraph 3.1 of the Complaint states that Appellants’ damages claims consist of claims for “overtime, compensatory time, ‘specialty pay’, ‘supervisor pay’ and ‘holiday pay’....” CP 5. All of these claims for pay are based directly on the compensation provisions of Appellants’ Collective Bargaining Agreement (“CBA”). With the single exception of the “doubled” component of the exemplary **damages** sought by Appellants under RCW 49.52.070, none of the wages claimed by Appellants in this case are based on any statute or regulation.<sup>4</sup> Instead, all of the wages sought by Appellants are contract based, and arise directly from the terms of Appellants’ CBA.

In similar fashion, Appellants’ claims under RCW 49.52.050(2)

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<sup>4</sup> Appellants are not claiming that they are entitled to statutory minimum wages under RCW 49.46.020. Nor are they claiming that they are entitled to statutory overtime under RCW 49.46.130 (as correctional officers, Appellants are exempt from state overtime requirements under RCW 49.46.130(2)(h) and 49.46.130(5)). The only “overtime” pay Appellants seek in this case is contractual overtime required under the terms of their CBA.

and 49.52.070 are based on the assertion that Respondent “willfully” paid Appellants a lower wage than the wage the Respondent is obligated to pay under “any statute, ordinance, *or contract.*” RCW 49.52.050(2) (emphasis added). As explained above, none of the damages sought in this case are based upon any wage that Respondent, Thurston County, is obligated to pay Appellants by virtue of any “statute” or “ordinance.” Instead, all of the damages sought by Appellants are founded directly upon the contractual provisions of the CBA. In summary, the general notice and filing requirements of the claim filing statutes apply to all claims for damages against any county, regardless of the nature or type of the claims being asserted. Applying the plain meaning of this statutory language, Appellants’ wage and hour claims are subject to these requirements.

#### **IV. CONCLUSION**

Appellants miss the mark by arguing cases that predate the 1993 Legislature’s enactment of House Bill 1218. The clear language of RCW 4.96.010, RCW 4.96.020 and RCW 36.45.010 requires the filing of a claim for damages as a condition precedent to the commencement of any action claiming damages. Appellants did not file a claim for damages with Respondent Thurston County prior to filing the damages action which is the subject of this appeal. Accordingly, the trial court’s decision

dismissing Appellant's damages action must be upheld as a matter of law.

DATED this 17 day of April 2006.

EDWARD G. HOLM  
PROSECUTING ATTORNEY

  
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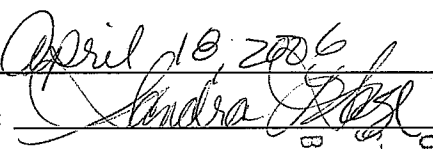
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